

BILL ANALYSIS

C.S.H.B. 2207
By: Gallego
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Some Texans buy their homes without knowing that their home comes with an underlying mortgage or lien. An increasingly popular “get rich quick” scheme encourages profiteers to buy homes that are distressed or subject to foreclosure, and merely cure the default without informing the lender that the property has been sold. These profiteers then turn around and sell to a buyer who would not qualify for a traditional mortgage because of poor credit or little money for a down payment.

Buyers may not know the amount of the underlying mortgage, or its terms. Both buyers and mortgage lenders are victimized by these transactions. The buyer could be foreclosed upon either if the seller did not make the underlying mortgage payments or if the mortgage contains a “due on sale” clause that gives the mortgage lender the right to accelerate the underlying note when they did not approve the sale. Because a title insurance policy is rarely provided in these transactions, the buyers are not informed of the lien or the risks.

C.S.H.B. 2207 requires that buyers obtain proper notice before buying real estate that does not have a title insurance policy or all recorded liens paid within 30 days of the sale. C.S.H.B. 2207 does not outlaw the transactions, but makes sure that sellers disclose the lien and risks to the buyer.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2207 amends the Property Code to prohibit a person from conveying an interest in property or entering into a contract to convey an interest in residential real property that will be recorded by a recorded lien at the time of conveyance unless on or before the seventh day before the earlier of the effective date of the conveyance or the execution of an executory contract or option contract, the person provides the purchaser a disclosure statement. The bill provides what information is required to be included in the disclosure statement. The bill provides that a violation of the above provisions will not invalidate a conveyance. The bill provides that in addition to any other remedy provided by law, a purchaser who did not receive the required disclosure statement is authorized to terminate the contract for any reason on or before the seventh day after the date the purchaser receives a statement in compliance with this bill. The bill provides that a violation of the above provision is not actionable if the person who should have given the notice takes reasonably necessary action to ensure each lien that was not disclosed will be released within 30 days after title has been transferred.

C.S.H.B. 2207 provides that provisions of the bill do not apply to certain transfers and sets forth those exceptions. The bill provides that the change in law made by this Act applies only to a transfer of property that occurs on a contract entered into on or after the effective date of this Act.

EFFECTIVE DATE

January 1, 2008.

C.S.H.B. 2207 80(R)

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute differs from the original by clarifying that the disclosure notice is required prior to an executory contract, or an option contract being signed. If there was a conflict signed prior to conveyance, a disclosure notice is required before actual conveyance. The substitute extends the need for disclosure to property that is authorized to be encumbered by a lien at the time of purchase as well as property already encumbered by a lien. The substitute adds to the required disclosure statement to include phone numbers of each lienholder to provide for greater ease to contact the lienholders. The substitute eliminates the requirement to identify each lienholder in connection with the original amount of the lien and any unpaid balance. The substitute deletes language relating to a violation the bill being a false, misleading, or deceptive act or practice. The substitute creates exceptions for certain transfers.